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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
10/018,238	09-Sep-02	KEVAN HATCHMAN, ET AL	SPC-948 US

Title: PERSONAL CARE FORMULATIONS

Art Unit	Paper Number
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Please find attached a communication from the Examiner regarding the Petition for Retroactive License under 37 CFR 5.25.



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In re: HATCHMAN et al. :DECISION ON REQUEST
Filing date: September 9, 2002 :UNDER 37 CFR 5.25
Serial No.: 10/018,238
Docket No.: SPC-948US

Title: PERSONAL CARE FORMULATIONS

This is a decision on the petition filed September 9, 2002 for retroactive foreign filing license.

Decision: Denied

37 CFR 5.25(a) requires the following:

1. A listing of each of the foreign countries in which the unlicensed patent application material was filed,
2. The dates on which the material was filed in each country,
3. A verified statement (oath or declaration) containing:
 - i. An averment that the subject matter in question was not under a secrecy order at the time it was filed abroad, and that it is not currently under a secrecy order,
 - ii. A showing that the license has been diligently sought after discovery of the proscribed foreign filing, and
 - iii. An explanation of why the material was filed abroad through error and without deceptive intent without the required license under § 5.11 first having been obtained, and
4. The required fee (§ 1.17(h)).

The above explanation must include a showing of facts rather than a mere allegation of action through error and without deceptive intent. The showing of facts as to the nature of the error should include statements by those persons having personal knowledge of the acts regarding filing in a foreign country and should be accompanied by copies of any necessary supporting documents such as letters of transmittal or instructions for filing. The acts which are alleged to constitute error without deceptive intent should cover the period leading up to and including each of the proscribed foreign filings.

The petition is Denied at this time in that the petition is defective since the requirements set forth in 37 C.F.R. 5.25(a)(3)(iii) have not been met.

The petition does not include a verified statement by one (namely, Mr. Savidge) who actually filed the patent applications, or who had personal knowledge of the acts regarding filing in a foreign country through error and without deceptive intent. Ms. Choi, although presently of counsel, is not considered to either have filed the applications at issue or to have personal knowledge of the acts or intent surrounding said filing, and therefore, her statement is inadequate to satisfy the requirements of 37 C.F.R. 5.25.

Thus, in the absence of a verified statement including an explanation or showing that the license was diligently sought, and that the foreign application was filed through error without deceptive intent, the provisions of 37 CFR 5.25 have not been met.

Accordingly, the provisions of 37 CFR 5.25 not having been fully met, the petition is DENIED, and in the absence of any response within 60 days of the mailing date of this letter, such denial will be made final and the final action under 35 U.S.C. 185 will be taken. Extensions of time may be had under 37 C.F.R. 1.136(a).



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